2620.

SUPREME COURT OF THE UNITED STATES.

No. 276.

THE UNITED STATES, APPELLANTS,

vs.

JOSEPH HUGHES.

APPEAL FROM THE DISTRICT COURT, U. S., FOR LOUISIANA.

INDEX.

	Original.	Print.
Petition of plaintiff	1	3
Demurrer of district attorney	3	4
Entry of record, granting leave to file a supplemental petition	4	5
Supplemental petition	5	5
Answer to the petition and supplemental petition	6	6
Waiver of demurrer	7	6
Replication	7	6
Entry of record, submission of cause	8	7
Evidence.		
1o. Document B, purporting to be the original petition and grant on which petitioner's claim is founded	8	7
French version annexed to foregoing	9	7
English do. do.	10	8
Notice appended to document B	11	8
2o. Deposition of A. Cruzat as to document B	12	9
3o. Deposition of André Castille as to signature of André Martin, and residence of his family	14	10
4o. Deposition of Cyprien Songy as to family residence, age, &c., of André Martin	16	11
5o. Sale by the heirs of André Martin to Joseph Hughes	18	12
Donation annexed to the foregoing	21	13
Close of evidence offered on behalf of plaintiff.		
Deposition of Bernard Marigny offered in evidence on behalf of defendants	24	15
Close of evidence.		
Deposition of H. T. Williams, taken by consent, and offered in evidence on behalf of plaintiff	25	15

[GIDEON, PRINT.]

	Original.	Print.
Opinion and judgment of the court	27	16
Entry of record, order of appeal	30	18
Entry of record, motion to set aside the order of appeal	31	18
Entry of record, continuance of the above motion	31	18
Entry of record, motion taken under advisement	22	18
Entry of record, order dismissing same	32	19
Clerk's and judge's certificates	33	19
Citation of appeal	34	20

U. S. district court, eastern district of Louisiana, in chancery.

JOSEPH HUGHES
vs.
The UNITED STATES. } No. 47.

Be it remembered that, heretofore, to wit, on the 16th day of June, being at the May term, A. D. 1846, of said court, Joseph Hughes, by his solicitor, E. Stevens, esq., came into the clerk's office of said court, and filed his petition, which is in the words and figures following, to wit:

To the honorable district court of the United States, in and for the district of Louisiana.

The petition of Joseph Hughes, of the parish of St. Landry, in this State, with respect, represents, that on the 8th day of October, in the year 1798, Manuel Gayoso de Lemos, then governor of the province of Louisiana, did grant to André Martin, then an inhabitant of said province, on his petition, a certain tract of land of twenty-eight arpents front, with a depth of one hundred arpents, situated on the west bank of the river Atchafalaya, about one league above where the trace or road from Opelousas to Pointe Coupée crosses the said river; and that the said Martin took immediate possession of the said tract of land, and held possession from that time to the time of his death.

Your petitioner further represents, that the said claim or grant was presented to a board of commissioners, duly authorized by law to report on such claims at the town of Opelousas, in this State; and that, in the year 1840, they did make a favorable report on said claim, and recommended it for confirmation, and that Congress never took any final action thereon.

Your petitioner further represents, that the original papers and titles are now in possession of the Government of the United States, and that your petitioner can only present copies of the same duly certified by the proper authority, which will be filed in this suit for reference.

Your petitioner further represents, that he holds a title to one thousand arpents of the above described tract of land, to be taken off of the front of the said tract of land in such a manner as to not interfere with any purchases which may have been made by individuals from the United States.

Your petitioner further represents, that under the provisions of an act of Congress, approved on the 17th day of June, 1844, entitled "an act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and those parts of Mississippi and Alabama south of the 31st degree of north latitude, and between the Mississippi and Perdido rivers;" which said act of Congress revived an

act of Congress, approved on the 26th day of May, 1824, entitled an act to enable claimants to lands within the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims, and extended the provisions thereof to the State of Louisiana, and the other States; under these acts of Congress your petitioner claims the right to have his title established against the United States.

The premises considered, your petitioner prays leave to file this petition; that a copy thereof may be served on the district attorney of the United States for this district; and after proper proceedings thereon, that it may be adjudged and decreed that the title of your petitioner is good and valid against the United States, and that your petitioner is entitled to a patent for the same, according to the United States surveys heretofore made.

Your petitioner prays for such other and further relief as justice and equity may demand; and as in duty bound, &c.

(Signed) E. STEVENS,
Attorney for petitioner.

And the foregoing petition was thus endorsed:

Service accepted, citation waived, and copy furnished. June 16, 1846.

(Signed) S. W. DOWNS,
U. S. Dist. Att'y.

And afterwards, to wit, on the 18th November, A. D. 1846, the following demurrer was filed of record in the office of the clerk of said court:

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

In the district court of the United States for the district of Louisiana.

The demurrer of the United States, defendants, to the petition of Joseph Hughes.

The defendant, not confessing all or any of the matters in the plaintiff's petition set forth, doth demur in law to the said petition, and for cause of demurrer doth show, that the plaintiff has not by his petition made out such a case as entitles him to relief under the act of Congress, of 17th June, 1844, and the acts thereby revived; and for cause of demurrer saith, that it is not alleged in said petition that the original grant, from which plaintiff claims, was made to a party at the date thereof a resident of the province of Louisiana.

Wherefore defendant doth demur to the said petition, and prays the judgment of this honorable court whether he shall be compelled to answer further or otherwise to the said bill and petition, and prays hence to be dismissed.

(Signed) THOMAS J. DURANT,
Atttorney U. S. for La.

And afterwards, to wit, at the December term, A. D. 1846, being the 14th day of January, 1847, the following entry was made of record, in this case, on the minutes of said court:

January 14th, 1847.

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

Upon motion of E. Stevens, esq., of counsel for the petitioner in the suit as above entitled, it is ordered that the supplemental petition, exhibited to the court in said suit, be filed, and that the same be taken as a part of the original petition, and that a copy thereof be served upon Thos. J. Durant, the district attorney of the United States.

And thereupon, to wit, on the same day, the following supplemental petition was filed of record:

JOSEPH HUGHES
vs. } No. 47.
The UNITED STATES.

To the honorable district court of the United States, in and for the district of Louisiana.

The supplemental petition of Joseph Hughes, plaintiff in the above entitled suit, respectfully represents, that André Martin, the original grantee mentioned in the original petition filed in this suit, was at the time of issuing and dating of the said grant a resident of the province of Louisiana; that said grant or order of survey was legally issued and made before the 10th of March, A. D. 1804, by the proper authorities; that the same was protected and secured by the treaty between the United States of America and the French Republic, of the 30th April, A. D. 1803, and might and would have been perfected into a complete title, under and in conformity with the laws, usages, and customs of the Government under which the same originated, had not the sovereignty of the country been transferred to the United States; that said grant is situated in the State of Louisiana.

Your petitioner further avers, that said grant, concession, or order of survey was dated the 10th day of October, 1798, instead of the 8th of same month, as stated in the original petition, and is valid by the laws, ordinances, and usages and customs of the said Government, under which the same originated; and that the said grant or claim is valid by the laws of nations, by treaty stipulations and proceedings under the same by the several acts of Congress in relation thereto, and the principles of equity and justice.

Wherefore your petitioner prays leave to file this his supplemental petition, that it be taken and treated as a part of his original petition; that the United States may be duly cited to answer this supplemental petition; and that after due proceedings shall be had, that your petitioner

be confirmed in his title, and for such other and further relief *and* equity and justice may demand, as before prayed for.

(Signed) E. STEPHENS, *Att'y for Pet'r.*

And further, at the same term, to wit, being the 13th day of February, 1847, the following answer to the petition and supplemental petition was filed of record in the office of the clerk:

JOSEPH HUGHES vs. The UNITED STATES. } No. 47.

In the district court of the United States, for the district of Louisiana.

And now comes into the aforesaid district court Thomas J. Durant, attorney of the United States for the district of Louisiana, and for answer to the petition and supplemental petition herein filed by plaintiff, respectfully represents, that the defendants, the United States, deny all and singular the facts and allegations in said petition set forth.

Wherefore they pray that the aforesaid petition may be dismissed, and that the plaintiff be condemned to pay all costs.

(Signed) THOMAS J. DURANT,
Att'y of the U. S. for the district of La.

And afterwards, at the December term, 1848, being the 5th day of February, 1849, the following waiver was filed of record in the clerk's office: The demurrer filed on the 18th day of November, 1846, is waived, having been filed in error of fact.

(Signed) THOMAS J. DURANT,
Att'y U. S. for La.

And further, at the same term, the following replication was filed of record, (filed February 9th, 1849:)

Suit No. 47. In the United States district court, for the district of of Louisiana, between—

JOSEPH HUGHES, of the parish of St. Landry, plaintiff, and The UNITED STATES. }

Joseph Hughes, plaintiff, for replication to the answer filed by the attorney of the United States in the above entitled suit, respectfully represents, that this repliant, reserving all exceptions saith, that he doth and will aver, maintain, and prove his said petition or bill to be true and sufficient in law, and that the answer of said defendant is insufficient in law to be replied to; all of which matters this repliant is ready to aver, maintain, and prove, as this honorable court may direct; and humbly prays, as in and by his said bill or petition he hath already prayed.

(Signed) JNO. L. DANIEL,
Ag't and att'y in fact for Joseph Hughes.

2623.

And afterwards, to wit, at the February term, A. D. 1849, being the 6th day of March, 1849, the following entry was made of record in this case on the minutes of said court:

JOSEPH HUGHES vs. The UNITED STATES. } No. 47.

The pleadings in this cause being complete, the same was, by consent of Jno. L. Daniel, esq., on behalf of the plaintiff, and the United States attorney for the defendants, submitted on the evidence of record to the consideration of the court.

And be it remembered, that the evidence of record, and offered this day on behalf of the plaintiff, is the following.

1°. Doc. B, purporting to be the original document, on which petitioner's claim is founded.

NUEVA ORLEANS, 1° *de Octubre de* 1798.

Sor. Govdor. y Commandante General: André Martin, con el debido respecto, ante V. S. espone que lugar ó sitir en los prados adonde le tiene su habitation siendo tan destituido de madera propra por la construcion de la fabricas necesarios en el giro de su profecion.

A V. S. suplica se sirve concederle trienta y ocho arpanes de tierra a frente con su fondo de ciento sobre el rio Achafalia, por el lado occidental como una legua, mas arriba el lugar adonde atraversar el camino qe. va desde el punto de la cortada hasta Opalousas; gracia ql. espera de su benignidad de V. S.

(Signed) ANDRÉ MARTIN.

NUEVA ORLEANS, 10 *de Octubre de* 1798.

Concedido siempre que pase a establecer.

(Signed) MANUEL GAYOSO DE LEMOS.

French version of the foregoing annexed thereto.

NOUVELLE ORLEANS, *premier* 8*bre* 1798.

Mr. le Gouverneur et Commandt. Genl: André Martin, avec le respectu dû pardevant votre seigneurie expose, que l'endroit où est située son habitation dans la prairie, est tellement dénué de bois propre á batir, qu'il ne peut rien construire pour sa profession.

Il supplie V. S. de lui concéder trente huit arpens de terre de face, sur la profondeur de cent arpens sur la rivière Achfaylia, sur la partie occidentale, à environ une lieue au dessus de l'endroit où traverse le chemin qui va de la Pointe Coupée aux Opelousas. Grace qu'il espére de la bonte de V. S.

ANDRÉ MARTIN.

NOUVELLE ORLEANS, 10 8*bre*, 1798.

Concédé pourvu'qu'il aille établer.

MANUEL GAYOSO DE LEMOS.

English version of the foregoing annexed thereto

JOSEPH HUGHES
vs.
THE UNITED STATES. } Translation of doc. B, No. 47.

NEW ORLEANS, *October* 1, 1798.

To his excellency the Governor:

André Martin respectfully represents to your excellency that the spot where his plantation is located in the prairie is so destitute of timber for construction, that his profession is for him of no avail. Wherefore he prays your excellency to grant him thirty-eight arpents of land in front, on a depth of one hundred arpents, on the river Atchafalaya, on the occidental side of said river, at about one league above the place where the road which runs from Pointe Coupée to Opelousas crosses. He hopes that your excellency will grant him this favor.

(Signed) ANDRÉ MARTIN.

NEW ORLEANS, *October* 10*th*, 1798.

Granted forever, that he may establish it.

(Signed) MANUEL GAYOSO DE LEMOS.

I certify the above translation to be true and faithful.

(Signed) LS. DUVIGNEAUD,
U. S. district court interpreter.

Above translation filed, March 31st, 1849.

(Signed) ROBT. M. LUSHER,
Dpy. clerk.

Notice appended to doc. B.

To the register and receiver of the land office at Opelousas, in the State Louisiana.

Gentlemen: Please take notice that a claim is hereby filed for record, report and confirmation, for thirty-eight arpens front by one hundred arpens in depth, situated on the west bank of the river Atchafalaya, about one league above the road leading from Pointe Coupée to Opelousas. The said tract of land was granted to André Martin, by a decree and order of survey of Manuel Gayoso de Lemos, (then civil and military governor of the province of Louisiana,) dated New Orleans, October 8th, 1798. The said tract of land is now claimed by the heirs and legal representatives of the said Martin, in virtue of several acts of Congress giving further time for the final adjustment of claims or titles to land in the State of Louisiana.

Respectfully submitted.

(Signed) JOHN L. DANIEL,
For the claimants.

OPELOUSAS, LA., *February* 1, 1837.

2°. *Deposition of A. Cruzat, as to doc. B.*

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

Clerk's office, U. S. district court, March 16th, 1847.

The parties representing the plaintiffs and defendants in the above entitled cause this day appeared before me, the undersigned commissioner, and by consent the plaintiff introduced a witness, A. Cruzat, whose deposition, when taken, [was] to be used on the trial of said cause.

Antoine Cruzat, on behalf of plaintiff, being duly sworn, states that the signature of Manuel Gayoso de Lemos, in document B, being to the left of the page, and purporting to be dated New Orleans, October, 1798, is the true and genuine signature of said de Lemos.

Cross examined by the U. S. district attorney.

The said Gayoso de Lemos was governor of the province of Louisiana, in 1798. Witness has often seen him write his name; he, witness, was his secretary. Witness does not know the writing above the signature of Gayoso. He did not know André Martin. It was not usual for the Governor to write what appears to be above the signature of Gayoso in said document; it was customary to have this written in the secretary's office; it is not the handwriting of witness. He, witness, does not know whether or no he was in the office of the secretary at the time when this writing appears to have been dated. Witness was acquainted with all the persons employed at that time in the office of the secretary, and knows that they were often changed.

The brother of the witness was employed there occasionally. Charles Tessier and John Mercier were permanent clerks in the office, and worked there all the while.

The writing referred to above the signature of Gayoso is not the handwriting of witness' brother, nor the handwriting of Charles Tessier, nor of John Mercier.

Believes that the signature of Gayoso de Lemos to the said writing is his true signature, resembling all others of his signatures that he has seen; states that he has no doubt of the genuiness of said signature.

Witness states that Gayoso, in signing his name, always affixed thereto a paraphe. He signed simply his name, without adding thereto the style of his office.

Witness does not know the handwriting of the petition of André Martin in said document.

Sometimes young men were taken into the office of the secretary to write when the office was much pressed with business.

Gayoso died in July, 1799. He had a seal, but never affixed it to such instruments as those in doc. B.

The paper used in the secretary's office came from Barcelona, in Spain; some of it came from Havana; but all said paper was manufactured in Spain, whether it came from Havana or not.

The ink used at that time was imported; there was none manufactured in New Orleans. The ink tasted as other inks do; some became darker and others paler.

(Signed) A. CRUZAT.

I, N. R. Jennings, duly appointed commissioner to take evidence in land causes, do certify, that the foregoing deposition was reduced by me to writing, in the presence of the witness, Antoine Cruzat, that the same was carefully read over to him, and then subscribed before me.

March 16, 1847.

(Signed) N. R. JENNINGS, *Com'r.*

3o. *Deposition of André Castillo as to signature of Andre Martin, and residence of his family, &c.*

United States district court, district of Louisiana, sitting in chancery.

JOSEPH HUGHES vs. THE UNITED STATES. } No. 47.

Clerk's office, December 9th, 1848.

Be it remembered, that on this day appeared before me, the undersigned, deputy commissioner (ex officio) in land causes (under rule 9th of said court,) the plaintiff in the above entitled cause, by John L. Daniel, esq., and the defendants, by C. W. Hornor, esq., for the U. S. district attorney, when I proceeded to take down in writing, in the English language, the deposition, in the French, of André Castillo, a witness for the plaintiff; said deposition being by me faithfully translated as it hereinafter appears, to wit:

Mr. André Castillo, witness for the plaintiff, being duly sworn, and shewn the signature purporting to be that of André Martin, and attached to doc. B in the above cause, deposes that said signature is genuine: that he, witness, had frequent relations with said Martin and often saw him write his name; witness knew him from the year 1810, and had personal relations with him from 1816 to 1818.

From what witness knows of the family, he believes them all to have been creoles of the country, born at the time of the Spanish sway in Louisiana; witness himself was born in Spain, but was brought up in Louisiana from early infancy.

At the time of his death, which took place about sixteen years ago, Mr. André was from 55 to 57 years of age.

On cross questions by C. W. Hornor, esq., for the United States, witness deposes that he has no interest in the above cause, and no connection with André Martin's family but that of friendship and neighborly feeling.

(Signed) ANDRE CASTILLO.

And I do now certify and attest, that the aforegoing is the true, full, and faithful deposition of André Castillo, the witness aforesaid; that the same was read aloud to him, and by him signed in my presence.

Witness my hand and seal this ninth day of December, 1848, and 73d of the independence of the Republic.

[SEAL.] (Signed) ROBT. M. LUSHER,
Deputy Commissioner in land causes.

4°. *Deposition of Cyprien Songy, as to family residence, age, &c., André Martin.*

U. S. district court, district of Louisiana.

JOSEPH HUGHES vs. THE UNITED STATES. } No. 47.

CLERK'S OFFICE, *January 26th*, 1849.

Be it remembered, that on this 26th day of January, A. D. 1849, before me, the undersigned deputy clerk of said court, and ex officio deputy commissioner for taking testimony in land causes, appeared the plaintiff in the above cause by John L. Daniel, esq.; the attorney for the defendants also appearing, when I proceeded to take down in writing, as follows, the deposition of Cyprien Songy, esq., a witness introduced on behalf of the plaintiff; said deposition being given in the French tongue, the witness's vernacular, and by me rendered faithfully into English.

Cyprien Songy, a witness for the plaintiff, being duly sworn, states that he is now in his fiftieth year; that he was well acquainted with André Martin, père, who resided in the Attakapas, and who is by witness known to have been a creole of the country. If Mr. André Martin, père, were now alive, he would be upwards of eighty years of age, which fact witness knows from general reputation, witness not being old enough himself to give it as personal knowledge.

By the name of André Martin, witness has never known any other individual than his now living son, who was usually called "Valerin" Martin.

(Signed) CYPRIEN SONGY.

Sworn to and subscribed this 26th January, A. D. 1849, before
(Signed) ROBT. M. LUSHER,
Deputy clerk, U. S. D. C., and ex officio deputy commissioner in land causes.

The foregoing I certify to be the true and exact deposition of Cyprien Songy, a witness introduced by the plaintiff; and further, that the district attorney being present, there were no cross questions propounded to the witness.

(Signed) ROBT. M. LUSHER,
Deputy Commissioner.

5°. *Sale by the heirs of André Martin to Joseph Hughes.*

STATE OF LOUISIANA,
Parish of Lafayette.

Be it remembered that on this fourteenth day of July, anno domini eighteen hundred and forty-eight, before me, Auguste Cesar, recorder and ex officio notary public within and for the parish of Lafayette, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared André Martin, Amilie Martin, herein assisted and authorized by her husband, Rosemond Dugat, Eminionne Martin, as well in her own right as in the right of Charles Martin, who has this day made a donation to her, of even date with this act, and herein assisted and authorized by her husband Paulin Arcenaux, Miss Adeline Martin, Miss Erminie Martin, Miss Caroline Martin, all of the parish of Lafayette aforesaid, all heirs, and they together being the only heirs and legal representatives of André Martin, senior, late of the parish of Lafayette, deceased, who declared that, for the consideration hereinafter mentioned, do grant, bargain, and sell to Joseph Hughes, of the parish of St. Landry, and who is here represented by John L. Daniel, by an act under private signature, dated the ninth of October, 1846, which is hereunto annexed, viz., all their right, title, interest, and claim to a certain claim or grant of land which was made by the Spanish Government to the late André Martin, senior, deceased, and which said tract of land is situated immediately in the rear of and adjacent to the original grant of Claude Martin, Olivier Thibodeaux, and Theodore Thibodeaux, in the parish of Lafayette aforesaid; and which said grant to the said André Martin, sen'r, is now on file in the United States district court of Louisiana, in the city of New Orleans, in the name and for the use of Joseph Hughes; and which said tract of land contains according to the calls of the said grant about three thousands arpents of land, more or less. It is well understood, by and between the parties, that the present vendors only sell such rights as they now possess without any sort of guarantee; and it is further understood between the parties that André Martin or Charles Martin, or one or both of them, may have, as agent for the present vendors, some ten or twelve years ago, made a certain writing obligatory in his or their names, but for the rest of the present vendors, in favor of one Christopher Adams, for a certain portion of the above described tract or grant of land, in case the same should be confirmed by or through the instrumentality of the said Adams, by the Congress of the United States, all of which the said Adams or his nephew, Christopher Adams, jr., who held the writing obligatory given to the uncle but in the name of Christopher Adams, jr., have failed to do. But, nevertheless, the present vendors sell the aforesaid claim or right subject to the legal rights of the said Christopher Adams, jr., if he have any.

And the present vendors sell and transfer to the said Joseph Hughes such rights as they have, without any guarantee whatever, to one thousand arpents of land, to be taken off of the front part of a certain claim

or grant of land, made under the authority of the Spanish government, to the said André Martin, senior, deceased, for three thousand eight hundred arpents, more or less, of land situated on the Atchafalaya river, in the parish of St. Landry, about three miles above where the road from Opelousas to Point Coupée crosses said river; and for which said last mentioned tract of one thousand arpens of land the said Hughes has now a suit filed in the United States district court in the city of New Orleans.

This sale is made without guarantee as aforesaid, and for and in consideration of the personal services of John L. Daniel, which have been rendered in getting the above claims in a situation to be confirmed, and the right of compensation for the said Daniel's services have been transferred to the said Joseph Hughes; and for the further consideration, that the said Hughes, in case the first above mentioned claim or grant shall be confirmed, to give to each of the vendors for the part of each heir one quarter section of land, according to the provisions of the 11th section of the act of Congress, approved on the 26th May, 1826, now revived, under which the above mentioned suits are now pending.

Thus done, passed, and signed, at the parish aforesaid, on the day and year first above written, in presence of Dupré Patin and Destival Arcenaux, competent witnesses, who have hereto signed with the aforesaid parties, and me, notary aforesaid, after due reading.

Before signing these presents, it is understood between the parties to this agreement, that in case the last above described tract of land shall be confirmed by the said court or courts of the United States, then, and in that case, the said Hughes is to give a pro rata rate of floats, to wit, a right to locate for all the heirs four hundred arpents together. Adeline Martin, Erminée Martin, Caroline ⋈ Martin, her mark, André Martin, Ermionne Martin, Pauline Arcenaux, Jno. L. Daniel, for Joseph Hughes, Jean Dupré Patin, Destival Arcenaux, witnesses to the three first vendors, P. Susane, Charles Martin.

AUGUSTE CESAR,
Notary public.

I do hereby certify the foregoing to a true copy of the original on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed my official seal, at Vermillionville, this seventeenth day of July, [SEAL.] A. D. one thousand eight hundred and forty-eight.

(Signed) AUGUSTE CESAR,
Notary public.

Donation annexed to the foregoing sale.

STATE OF LOUISIANA, *parish of Lafayette.*

Be it remembered, that on this thirteenth day of July, anno domini one thousand eight hundred and forty-eight, before me, Auguste Cesar, recorder and ex officio notary public, in and for the parish of Lafayette, and in presence of the witnesses hereinafter named and undersigned, personally appeared Charles Martin, a resident inhabitant of the parish

of Lafayette aforesaid, who declared and confessed to have this day given, conveyed, and irrevocably set over, in full property, to Dame Hermione Martin, wife of Pauline Arceneaux, herein assisted and authorized by her said husband in the acceptation of this said donation, to wit, all the right, title, interest, and demand, which the said donor has or may have in and to a certain claim or grant of land, which was made by the Spanish Government to the late André Martin, senior, deceased, of whom the said donor is one of the heirs and legal representatives; said land [is] situated immediately in the rear of and adjacent to the original grants of Claude Martin, Olivier Thibodeaux, and Theodore Thibodeaux, and containing about three thousand arpents, superficial measure; also, all the rights, title, interest, and demand, which the said Charles Martin aforesaid has or may have on a tract of land of one thousand arpents, to be taken off of the front part of a certain claim or grant of land, made by the Spanish Government to the said André Martin, senior, for about three thousand eight hundred arpents, situated on the Atchafalaya river, in the parish of St. Landry, about three miles above where the road from Opelousas to Point Coupée crosses the said river.

It is well understood, by and between the parties to the present act of donation, that the said Charles Martin only conveys to said Hermione Martin, such right as he have, if any, without any warranty whatever as to the title or the quantity of land herein set forth.

The said donation is made in consideration of the friendship, and affection and esteem, which the donor bears towards the donee; the said Charles Martin having full and lawful right to make said donation.

This done, passed, and signed at my office, in Vermillionville, on the day and year first above written, in presence of J. Dupré Patin and Destival Arcenaux, competent witnesses, who have hereto set their names with the parties and me, notary public aforesaid, after due reading.

CHARLES MARTIN,
ERMIONE MARTIN,
PAULINE ARCENAUX,
P. SUSENA.

J. DUPRE PATIN,
DESTIVAL ARCENAUX,
Witnesses to the signature of the donor.

AUGUSTE CESAR, *Not. pub.*

I do hereby certify the foregoing to be a true copy of the original on file and of record in my office. In witness whereof I have hereunto set my hand and affixed my official seal, at Ver-
[L. S.] millionville, this sixteenth day of July, A. D. one thousand eight hundred and forty-eight.

(Signed) AUGUSTE CESAR, *Not. pub.*

Close of evidence offered on behalf of plaintiff.

And further, be it remembered, that the evidence offered this day on behalf of defendants is the following:

2627

Deposition of Bernard Marigny.

JOSEPH HUGHES vs. THE UNITED STATES. } No. 47.

Bernard Marigny, witness for the defendants, being duly sworn, deposes and says: Knew Manuel Gayoso de Lemos; he was Governor in the time of the Spanish government, and died in 1799. Witness has in his possession a number of letters written by Gayoso de Lemos to his (witness') father. Being shown the document B, filed by plaintiff in this suit, he examines the signature of Manuel Gayoso de Lemos attached, and considers it the same as that to the letters above spoken of.

(Signed) BERNARD MARIGNY.

J. L. DANIEL, for plaintiff, present.

Sworn to and subscribed before me, this 6th March, 1849.

(Signed) CHARLES W. HORNOR,
U. S. com'r for La.

Close of evidence offered on behalf of defendants.

And further, at the same term, to wit, on the 4th day of April, A. D. 1849, the following deposition was, by consent of parties, filed in evidence in the clerk's office:

Deposition of H. T. Williams.

United States district court, for the eastern district of Louisiana.

JOSEPH HUGHES vs. UNITED STATES. } No. 47.

Testimony taken, by consent, to be used on the trial of the case.

Henry T. Williams, witness for plaintiff, being duly sworn, deposes and says, he was surveyor general of the United States for the State of Louisiana; was so from 1834 to 1841; was previously deputy surveyor for a number of years. Witness surveyed the district of country on the east bank of the Atchafalaya, from its mouth to the south boundary of township No. five, range seven east, in the years 1830 and 1831, and was intimately acquainted with all the lands on the east bank of the Atchalafaya, within the limits aforesaid; having his family residence in Opelousas, he frequently passed from his surveying district to Opelousas. He did not confine himself regularly in travelling to the old, known, and marked trace, but knows that trace well, and has travelled it occasionally. It crossed the Atchafalaya from one-half to three-quarters of a mile below the mouths of the bayou Latinache on the east, and bayou Rouge on the west of said stream, and, as near as this deponent can recollect, about one mile and a half south of the north boundary of township four south, ranges six and seven east. It crossed at a place now occupied by a Mr. Pickett. Witness has repeatedly swam the Atchafalaya at the said crossing; it was known previously as the old trace leading from Pointe Coupée to Opelousas, as witness understood and believes; it being on the open ground, and clear of timber.

Cross examined.

Witness has no interest in this suit. Witness resides in Donaldsonville; has his office as State engineer in New Orleans. Witness recollects being introduced to plaintiff in 1840, in the city of Washington; thinks he has seen him once since at Opelousas. Witness was informed at that time that plaintiff was a farmer in the vicinity of Washington city. Witness believes that plaintiff did live at Opelousas since witness saw him at Washington.

(Signed) H. T. WILLIAMS.

Sworn to and subscribed before me, this fourth day of April, 1849, in the presence of J. L. Daniel, for plaintiff, and T. J. Durant, attorney U. S., for defendants.

(Signed) CHARLES W. HORNOR,
U. S. com'r for La.

And further, at the same term, to wit, on the 10th day of April, A. D. 1849, the following opinion was rendered, and judgment entered of record:

United States district court, eastern district of Louisiana, February term, 1849.

TUESDAY, *April 10th*, 1849.

Judges' opinion.

JOSEPH HUGHES vs. THE UNITED STATES. } No. 47.

The petitioner claims 1,000 arpents, under an alleged grant of thirty-eight arpents of land front, with a depth of one hundred arpents, situated on the west bank of the river Atchafalaya, about one league above where the trace or road from Opelousas to Pointe Coupée crosses the said river. The grant, it is alleged, was made by Gayoso de Lemos, colonial governor of Spain in Louisiana, on the 8th of October, 1798, to André Martin.

The petitioner, who claims the land by virtue of regular conveyances from the original grantee, has demanded the confirmation of the grant by virtue of the provisions of the act of Congress of May 26th, 1824, revived by that of June 17th, 1844. The district attorney on behalf of the United States pleads the general issue.

The petitioner has given in evidence the original petition of the grantee, bearing date the 1st of October, 1798, and the grant by the colonial governor thereon, bearing date the 10th of the same month and year. The signatures of the grantee and of the governor have been regularly proved by the testimony of witnesses acquainted with the same. The only objection urged against the grant by the district attorney is founded upon a supposed uncertainty in the locality thereof, as shewn by the petition of the grantee. I think, however, that the locality is sufficiently certain to enable a surveyor to survey the land, and to put the petitioner in possession. There certainly can be no difficulty

in finding where the "trace" or road referred to in the petition, addressed by the original grantee to the colonial governor, crosses the river Atchafalaya; when that is once found, it would be easy to run the front in that river, with the depth called for by the grant.

I have no doubt that the grant would have been perfected into a complete title had the territory remained under the dominion of Spain or France, and I have as little doubt that it is protected by the treaty of 1803. It is shown that the grantee was a resident of Louisiana at the date of the grant, and the claim has been proved to be, in all respects, such as the court should, under the equitable provisions of the act of 1824, regard with favor. I shall, therefore, decree in favor of the grant, and order the land to be regularly surveyed.

It is therefore ordered, adjudged, and decreed, that the title of the petitioner to the land in question be, and the same is hereby, declared valid against the United States; and if it should hereafter appear, upon an actual survey, that the land has been sold or otherwise disposed of by the United States, it is further ordered, adjudged, and decreed, that the petitioner be entitled to locate an equal quantity of arpents upon land belonging to the public domain, according to the provisions of the aforesaid act of 1824, revived by the act of 1844.

Judgment.

JOSEPH HUGHES vs. THE UNITED STATES. } No. 47.

In this case, the law and evidence being in favor of the plaintiff, Joseph Hughes, it is hereby ordered, adjudged, and decreed, that he recover of the United States one thousand arpents of land, as prayed for in his petition, to be taken (in accordance with his deed from the heirs of André Martin, filed in this suit) off of the front part of a tract of land which was granted to André Martin, by the Spanish Governor of Louisiana on the 8th day of October, 1798, and which said grant of land is for thirty-eight arpents in front, with a depth of one hundred arpents on the west bank of the Atchafalaya river, at the distance of about one league above where the old road or trace from Pointe Coupée to Opelousas crosses said river.

And it is further ordered and decreed, that in case the land so adjudged to be the property of the petitioner, or any portion thereof, shall have been sold or otherwise disposed of by the United States, then the said Joseph Hughes shall be entitled to locate an equal quantity elsewhere, according to the provisions of the 11th section of the act of Congress, approved on the 26th of May, 1824.

Judgment rendered April 10th, 1849; judgment signed April 14th, 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. Judge, eastern district of Louisiana.

And further, at the same term to wit, on the 19th day of May, 1849, the following order of appeal was entered of record in this case, on the minutes of said court:

Before the honorable Theodore H. McCaleb.

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

Be it remembered that, on this nineteenth day of May, in the year one thousand eight hundred and forty-nine, at the February term of this court, comes, in his own proper person, Thomas J. Durant, esq., attorney of the United States, for the eastern district of Louisiana, and gives the court here to understand and be informed, that the United States are injured and aggrieved by the judgment of this honorable court rendered against them at this term in the above cause, and that they desire to appeal therefrom:

It is thereupon ordered by the court, that an appeal be allowed in favor of the said United States, from the judgment rendered in the case aforesaid, returnable to the Supreme Court of the United States, at the next term thereof, after the date of this order.

And afterwards, at the May term, 1849, being the 9th day of June, A. D. 1849, the following entry was made of record in this case, on the minutes of said court:

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

In this cause plaintiff's counsel now comes into court, and moves that the district attorney of the United States shew cause, on Monday, the 11th inst., at 10 o'clock, a. m., why the order of appeal in the above suit should not be rescinded and set aside, because the judgment in this cause is for a less quantity of land than one thousand acres.

And further, at the same term, to wit, on the 11th day of June, A. D. 1849, the following entry was made of record on the minutes of this court:

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

The hearing of the motions entered herein to set aside the order of appeal granted in the said cause was, by consent, continued until to-morrow, at 10, a. m.

And further, at the same term, to wit, on the 12th day of June, 1849, the following entry was made of record in this case on the minutes of the record:

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

The motion entered herein to set aside the order of appeal granted in this cause was this day taken up and argued by William Dunbar,

esq., on behalf of the complainant, and the attorney of the United States for the defendants; when the court took the matter under advisement.

And further, at the same term, to wit, on the 13th day of June, 1849, the following entry was made of record in this case on the minutes of this court:

JOSEPH HUGHES
vs. } No. 47.
THE UNITED STATES.

Having held under advisement the motion entered herein to set aside the order of appeal heretofore granted in this case, and being of the opinion, from a consideration of the law and the argument of counsel, that the complainant has shewn no sufficient reason for rescinding said order; and further, that all doubts as to the interpretation to be given to the act of May 26th, 1824, are properly to be determined by the Supreme Court of the United States, the court doth now order and decree, and it is hereby ordered and decreed, that said motion be overruled and dismissed.

Finis.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans in and for said district, do hereby certify, that the foregoing thirty-two folios of manuscript contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, wherein Joseph Hughes (No. 47) is plaintiff, and the United States of America are defendants, No. 47 of the land docket of said court.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said court, at the city of New Orleans, this 24th day of September, one thousand eight hundred and forty-nine, and the 74th year of American independence.

N. R. JENNINGS,
Clerk U. S. district court, eastern dist. of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, do certify, that N. R. Jennings, who subscribed the above certificate, was, at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk, and that his above certificate is in due form of law.

Witness my hand and seal at New Orleans, this 25th day of September, A. D. 1849.

THEO. H. McCALEB. [SEAL.]